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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,810	02/18/2004	James D. Martin	432-001	1523

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11/18/2004

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,810

Applicant(s)

MARTIN, JAMES D.

Examiner

Bret C Hayes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 9 and 14-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because "means for connecting" at line 6 should be avoided as advised above. Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claim 9 is objected to because of the following informalities: lines 2 and 3, "section , and" should be --section, and--.

5. Claim 20 is objected to because of the following informalities: line 4, before "base receiver portion", insert --the-- or --said--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claims 1 – 5, 8 – 16 and 18, the word "means" is preceded by the word(s) "base", "base surface", "alignment", "cap", "flange", "plug", "attachment", "rod", "assembly support", "tie", "base connector", "post" and "pin" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Some of these examples include proper "means" plus function language, such as, "base surface means for...mating". (*Emphasis added.*) However, later references to this means are improper as indicated above. Also, claim 2, line 2 "base joining means for...uniting" should be one or the other for clarity, i.e.; either --joining means-- or --means for uniting-- and referenced as such throughout the remainder of the claims.

9. Regarding the above claims, examiner has done his best to find all such references.

However, a thorough revisiting and revising should be attempted as the list may not be complete.

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10. Claim 17 recites the limitation "said connector end section" in line 6. There is insufficient antecedent basis for this limitation in the claim. Instead, examiner believes this should be --said connector end portion--.

11. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,408,793 B1 to Rutter.

14. Re – claim 1, Rutter discloses the claimed invention including a rigid animal tether assembly 100 comprising: a) a rigid outwardly extending tie section 150 and a rigid inwardly extending tilt section 140, said tie section 150 including tie means for tethering 160 an animal at a distal end section 153 thereof and being connected at an opposing coupling end section 151 thereof to an open outer end, see FIG. 3, for example, of said tilt section 140; and b) base means [sic] 110 including base surface means for contiguously mating 131 with an open inner end 141 of the rigid tilt section 140; c) said coupling end section 151 of the rigid tie section 150 including means for connecting 142 biasing means, flexible portion 140, to said coupling end section 151 inside said tilt section 140, d) said biasing means, flexible portion 140, being effective to urge said base surface means [for...mating] 131 against the open inner end 141 of the tilt section 140 with an amount of force sufficient to project the rigid tie section 150 coupled to the outer end,

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FIG. 3, for example, of the tilt section 140 in a direction outwardly from said base surface means [for...mating] 131.

15. Re – claim 2, Rutter further discloses base joining means for tiltably uniting 111, 131 and 142 at leftmost side of FIG. 3, for example.

16. Re – claims 3 – 5, Rutter further discloses means for...uniting 141 including alignment means for registering – the same 111, 131 and 142 at leftmost side of FIG. 3, for example.

17. Re – claim 6, Rutter further discloses a resilient cap member 170 and a movably mounted ring means for releasably attaching 160 an animal tether lead.

18. Re – claim 7, Rutter further discloses the coupling section 151 including plug means for frictionally fitting 112 the open end, see FIG. 3, for example.

19. Re – claim 8, Rutter further discloses the plug means [for...fitting] 112 including shoulder means [sic] 320 against which the outer end, as seen in FIG. 3, for example, abuts.

20. Re – claim 9, Rutter further discloses the plug means [for...fitting] 112 being a bolt, which inherently includes means for fastening, and the joining means [for...uniting] 141 includes means for linking 111 the other end of the biasing means, flexible portion 140 to the base surface means [for...mating] 131.

21. Re – claim 10, Rutter discloses the claimed invention as indicated above, and further discloses the flexible member 140 being a tension-loaded spring member, as set forth at col. 4, line 6.

Allowable Subject Matter

22. Claims 14 – 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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23. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record discloses the claimed invention as indicated above including a tension-loaded spring member, except for tightening means for threadingly engaging the rod means for connecting, wherein the tightening means for...engaging adjusts an amount of tension in the spring member.

24. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

11/10/04


TERI P. LUU
SUPERVISORY PRIMARY EXAMINER